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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

L. R. POWELL, JR., AND HENRY W. ANDERSON,
RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AND
SEABOARD AIR LINE RAILWAY COMPANY,
Petitioners,

vs.

JOHN GRANT LAUGHTER.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

MURRAY ALLEN,
Counsel for Petitioners.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, L. R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Company, and Seaboard Air Line Railway Company, respectfully show:

Statement of the Case.

This action was begun by plaintiff, John Grant Laughter, respondent herein, against the defendants, L. R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Company, and Seaboard Air Line Railway Company, petitioners herein, to recover damages for personal

injuries alleged to have been sustained by him as the result of negligence of the defendants, while he was employed by defendants as trainman on one of defendants' freight trains running between Norlina, N. C., and Portsmouth, Va., on August 26, 1937. (Complaint, Sections 3 and 4, R. 2.)

The defendants denied liability and pleaded contributory negligence, assumption of risk, and fraud of plaintiff in obtaining employment, in that he made a false statement to the effect that he was not a minor, and that as a result of such fraud, he could not maintain an action under the Federal Employers' Liability Act, because he was not an employee. Defendants set out in the answer Rule 705 of their printed Rules and Regulations for the Government of the Operating Department, which provides that "Minors must not be employed in train, engine or yard service." (Amended Answer, R. 6.)

The case came on for trial at September Term, 1940, of the Superior Court of Warren County, before Nimocks, Judge Presiding, and a jury, and issues were submitted to and answered by the jury as follows:

1. Was the plaintiff injured by the negligence of the defendants, as alleged in the complaint?

Answer: Yes.

2. Did the plaintiff, by his own negligence, contribute to his injuries, as alleged in the answer?

Answer: Yes.

3. Did the plaintiff voluntarily assume the risk of injury, as alleged in the answer?

Answer: No.

4. What damage, if any, is the plaintiff entitled to recover?

Answer: $8,000.00.

5. Were defendants and plaintiff at the time of his injury engaged in interstate commerce?

Answer: Yes. (R. 14.)

From judgment on the verdict, defendants appealed to the Supreme Court of North Carolina. The appeal was heard at Spring Term, 1941, of the Supreme Court of North Carolina, and the judgment of the Superior Court was upheld (R. 121).

It was alleged by defendants that plaintiff, in his written application for employment filed with defendants on or about March 15, 1937, gave the date of his birth as "1916, Feb. 19," and orally stated to T. A. Norris, defendants' Train Master, by whom he was examined for employment, that he was twenty-one years of age. Defendants alleged that plaintiff was, in fact, born December 13, 1917, and was at the time of his alleged employment a minor; that plaintiff was familiar with defendants' rule against the employment of minors in train service and that he gave a false birth date and made a false statement as to his age for the purpose of deceiving defendants, in order to obtain employment in train service; that plaintiff's false statements were relied upon by defendants and as a result of such fraud and deceit he was put to work on one of defendants' trains (Amended Answer, R. 6).

In a Reply to Defendant's Answer (R. 10, 11), plaintiff admitted that he was guilty of fraud in obtaining his alleged employment, and attempted to justify such fraud by an allegation that he knew that defendants had habitually violated its rule in respect to employment of minors and he was told by defendants' yardmaster at Norlina, N. C., who knew that he was a minor, "to go ahead and tell the defendant's trainmaster that he was twenty-one years old."

This last allegation was not supported by evidence.

Defendants' allegations of fraud were fully supported by the testimony of plaintiff on cross-examination (R. 25), and by the testimony of T. A. Norris, trainmaster (R. 43).

Plaintiff, quite frankly, admitted that he stated to the trainmaster of defendants, to whom he made application for employment, that he was 21 years old, when he was only 19; that he put a false birth date in his written application, so that it would show him to be over 21 years of age; that he stated on his honor that his answers to the questions were correct; that he knew he "was supposed to be twenty-one" in order to obtain employment; that he knew this to be a rule of the railroad company and that he gave a false birth date in his application in order to obtain employment (R. 26, 27). Plaintiff was asked: "In order that you might get a position in train service you falsified the date of your birth in your application for employment? A. Yes. Q. And on the basis of your falsification you were put in train service? A. Practically right away, yes" (R. 27).

On redirect examination (R. 31), plaintiff testified:

> "Q. Counsel have asked you how you procured work, and the statement you made in respect to it; why did you make the statement to procure employment? A. I wanted to get a job with the Seaboard. Q. Why did you make the statement that you made, which has been shown you here and which you say you signed? A. I wanted a job."

T. A. Norris, trainmaster, testified: "Q. Would you or would you not have placed him at work on the Seaboard Air Line Railway if he had told you the truth about his age? A. If he had been under 21 I would not have employed him. Q. Did you put him to work because he told you he was over 21 years of age? A. Yes, that was among other requirements that I felt he met" (R. 44).

Errors Assigned.

Your petitioners further show:

That the Supreme Court of North Carolina erred in its construction of the Employers' Liability Act, approved by Congress on April 22, 1908, and amendments thereto, and by this error the Supreme Court of North Carolina decided against the rights set up and claimed by your petitioners under said statute. Said error is more particularly set forth as follows:

1. For that the Supreme Court of North Carolina, in construing the said Employers' Liability Act, erred in refusing to hold that, where the receivers of a railroad company have a rule prohibiting the employment of a minor in train service, plaintiff, who was familiar with said rule, and who at the time of his employment and at the time of his injury, was under twenty years of age, cannot recover damages under the said Employers' Liability Act for injuries sustained in train service when his employment in such service was secured by fraud, in that at the time of his application for employment he stated on his honor that he was over twenty-one years of age and gave a false birth date, which showed his age to be over twenty-one years, and when he would not have been employed if he had disclosed the fact of his minority.

The question presented was aptly raised by motions for judgment on the pleadings (Exception No. 5, R. 20), and for judgment as of nonsuit at the conclusion of plaintiff's evidence (Exception No. 15, R. 33) and at the conclusion of all the evidence (Exception No. 21, R. 59), and by exception to the charge of the trial court to the jury that plaintiff was, as a matter of law, an employee of defendants at the time of his injury (Exception No. 23, (R. 65), and the denial of these motions was duly assigned as error in the Supreme Court of North Carolina (Assignments of Error Nos. 5,

R. 96, 15, R. 98, 21, R. 99, and 23, R. 100). That the question was properly raised is conceded in the opinion of the North Carolina Supreme Court (R. 113).

Main Question in the Case.

Did the Supreme Court of North Carolina properly decide, in construing the Federal Employers' Liability Act, that plaintiff was entitled to recover as an employee within the provisions of said Act, where it appeared that the receivers of the railroad company had a rule prohibiting the employment of a minor in train service, with which plaintiff was familiar and that plaintiff, who at the time of his employment and at the time of his injury, while engaged in train service, was under twenty-one years of age, secured his employment in such train service by fraud in that at the time of his application for employment he stated on his honor that he was over twenty-one years of age and gave a false birth date, which showed his age to be over twenty-one years, when he would not have been employed if he had disclosed the fact of his minority.

This main question was presented to the Supreme Court of North Carolina on the following assignments of error:

1. Did the trial court err in refusing to grant defendants' motion for judgment on the pleadings?

2. Did the trial court err in refusing to grant defendants' motions for judgment of nonsuit at the conclusion of plaintiff's evidence and at the conclusion of all the evidence?

3. Did the trial court err in instructing the jury "as a matter of law that in the opinion of the court the plaintiff, on August 26, 1937, was an employee of the defendants engaged in interstate commerce, and as such employee had the legal right to institute this suit under the provisions of the Federal Employers' Liability Act?"

Your petitioners file herewith as an exhibit a certified copy of the transcript of record, including all proceedings in the Supreme Court of North Carolina, and submit under this cover a brief in support of their petition.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court and that the judgment of the Supreme Court of North Carolina may be reviewed and reversed by this Honorable Court.

MURRAY ALLEN,
Attorney for Petitioners.